UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 13 2013

REPLY TO THE ATTENTION OF:

WC-15J

**CERTIFIED MAIL 7009 1680 0000 7678 5778**
**RETURN RECEIPT REQUESTED**

[redacted]
De Pere, Wisconsin 54115

Subject: Order for Compliance Pursuant to 33 U.S.C. §§ 1318 and 1319(a).
Docket No. V-W-13-AO-22

Dear [redacted]:

Protecting water quality is a high priority of the U.S. Environmental Protection Agency. Pollutants such as excessive nutrients and pathogens discharged to waterways from animal feeding operations contribute to poor water quality and impairment of uses of those waterways.

As you know, EPA inspected your facility on April 18, 2013. During the inspection, we observed violations of the Clean Water Act (CWA). Enclosed is the above referenced Order for Compliance (Order). This Order requires you to immediately cease all unauthorized discharges and to construct the necessary structures to comply with the CWA. This Order also requires you to submit a complete Wisconsin Pollutant Discharge Elimination System permit application to the Wisconsin Department of Natural Resources (WDNR).

You must comply with this Order within the time periods specified in the Order. Failure to comply with the Order may subject you to further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319(a).

Please be advised that neither the issuance of this Order by EPA nor compliance with its terms affects your obligation to comply with the CWA or any other Federal or State laws or regulations, nor does it preclude further enforcement action pursuant to 33 U.S.C. § 1319 for the violations cited herein or any other violations committed by you.

Under the Order, you have the right to request an informal conference with EPA within ten (10) calendar days of receipt of this Order. Any such conference shall be held within ten (10) calendar days from the date of the request, unless extended by the agreement of the parties.

Assistance with constructing structures necessary to comply with this order may be available through the Environmental Quality Incentives Program (EQIP). The Farm Security and Rural Investment Act of 2008 (Farm Bill) authorized the National Resource Conservation Service (NRCS) to provide voluntary conservation program for farmers and ranchers that promotes agricultural production and environmental quality as compatible national goals. EQIP offers financial and technical help to assist eligible participants install or implement structural and management practices on eligible agricultural land. EQIP is a competitive program. In order to sign up for EQIP, the Natural Resources Conservation Service (NRCS) must determine the applicant to be an eligible producer, and the land to be eligible. NRCS assistance is available at any USDA Service Center.

Also enclosed is a copy of the EPA inspection report on the Concentrated Animal Feeding Operation inspection that EPA conducted on April 18, 2013. If you have any questions concerning this matter, please contact Donald R. Schwer III of my staff at (312) 353-8752, or your attorney may contact Catherine Garypie, EPA Region 5, Office of Regional Counsel at (312) 886-5825.

Sincerely,

Patty Swanson

for Tinka G. Hyde
Director, Water Division

Enclosures

cc: Tom Bauman, WDNR
Jay Schiefelbein, WDNR

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 5**

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|---|---|---|
| **IN THE MATTER OF:** | ) | |
| | ) | **ORDER FOR COMPLIANCE** |
| | ) | **UNDER SECTIONS 308 AND 309(a)** |
| [redacted] Farms LLC | ) | **OF THE CLEAN WATER ACT** |
| [redacted] | ) | |
| De Pere, Wisconsin 54115 | ) | |
| | ) | |
| | ) | |
| **Respondent.** | ) | DOCKET NO: V-W-13-AO-22 |
| | ) | |

The U.S. Environmental Protection Agency (EPA) issues this Order (Order) to [redacted] Farms LLC (Respondent) under the authority of Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318 and 1319(a). The Administrator of EPA has delegated the authority to issue such orders to the Regional Administrator of EPA Region 5, who has redelegated this authority to the Director of the Water Division, EPA, Region 5.

## I. INTRODUCTION

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to the waters of the United States except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

2. Pursuant to the CWA and EPA regulations, the owner or operator of a concentrated animal feeding operation (CAFO) which discharges must seek coverage under an NPDES permit. 33 U.S.C. § 1318; 40 C.F.R. § 122.23(d). Pursuant to 33 U.S.C. § 1318, the owner or operator must also provide other information as reasonably required by EPA.

3. EPA has authorized the State of Wisconsin to issue NPDES permits under Section 402(b) of the CWA, 33 U.S.C § 1342(b). The Wisconsin Department of Natural Resources (WDNR) is the NPDES permitting authority for the State of Wisconsin. WDNR refers to the NPDES permits that it issues as "WPDES permits." EPA retains the authority to enforce the CWA in Wisconsin.

## II. DEFINITIONS

4. All terms used but not defined in this Order shall have the meanings provided to them in the CWA and EPA regulations promulgated under the CWA.

5. "Animal feeding operation" or "AFO" means, among other things, "a lot or facility where . . . (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 calendar days or more in any 12 month period and, (ii) Crops,

vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility." *See* 40 C.F.R. § 122.23(b)(1).

6. "Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as, *inter alia,* a Large CAFO or Medium CAFO. Two or more AFOs under common ownership are considered to be a single AFO for the purpose of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. *See* 40 C.F.R. § 122.23(b)(2).

7. "Discharge" or "discharge of a pollutant" means, among other things, any addition of any pollutant to navigable waters from any point source. *See* Sections 502(12), 502(16) of the CWA, 33 U.S.C. §§ 1362(12), 1362(16); 40 C.F.R. § 122.2.

8. "Land application area" means land under the control of the Respondent, whether that land is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied. *See* 40 C.F.R. § 122.23(b)(3).

9. "Manure" means manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal. *See* 40 C.F.R. § 122.23(b)(5).

10. "Medium CAFO" means, among other things, an AFO that stables or confines 200 to 699 mature dairy cows, whether milked or dry, and meets either one of the following conditions: (A) pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (B) pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation. 40 C.F.R. § 122.23(b)(6).

11. "Navigable waters" means the waters of the United States. *See* Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

12. "Nutrient management plan" means the plan described in and required by Sections IV.C. and IV.D. of this Order.

13. "Overflow" means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or stormwater can be contained by the structure.

14. "Person" means, among other things, an individual, association, partnership, or corporation. *See* Section 502(5) of the CWA, 33 U.S.C. § 1362(5); 40 C.F.R. § 122.2.

15. "Point source" means, among other things, "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, … [or] concentrated animal feeding operation … from which pollutants are or may be discharged." *See* Section 502(14) of the CWA, 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2.

16. "Pollutant" means, among other things, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, wrecked or discarded equipment, rock, sand, cellar dirt, and agricultural waste discharged into water. *See* Section 502(6) of the CWA, 33 U.S.C. § 1362(6); 40 C.F.R. § 122.2.

17. "Process wastewater" means water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding. *See* 40 C.F.R. § 122.23(b)(7).

18. "Production area" means that part of the Site that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment area. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities. *See* 40 C.F.R. § 122.23(b)(8).

19. "Site" shall mean the facility or facilities owned or operated by Respondent located at or about [redacted] De Pere, WI 54115 (the "Home Site") and [redacted] De Pere, WI 54311 (the "Satellite Site") including but not limited to the land application area, the production area, and adjacent land issued in connection with the land application area and/or production area.

20. "Waters of the United States" means, in accordance with 40 C.F.R. § 122.2, among other things:

    a) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce;

    b) all interstate waters, including interstate wetlands;

    c) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes or natural ponds, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including any such waters:

(1) which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) which are or could be used for industrial purposes by industries in interstate commerce;

d) all impoundments of waters otherwise defined as waters of the United States under this definition;

e) tributaries of waters identified in Subparagraphs (a) through (d) of this definition; and

f) wetlands adjacent to the waters identified above.

## III. FINDINGS

21. Respondent is a person who owns or operates a dairy cow facility located at the Site.

22. The Site is an animal feeding operation because:

a) the Site includes lots or facilities where animals have been, are or will be stabled or confined and fed or maintained for a total of 45 calendar days or more in any 12 month period, within the meaning of 40 C.F.R. § 122.23(b)(1)(i); and

b) crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of those lots or facilities, within the meaning of 40 C.F.R. § 122.23(b)(1)(ii).

23. The Site is a CAFO and a medium CAFO because it stables or confines 200 to 699 mature dairy cows, whether milked or dry, and: (A) pollutants are discharged into waters of the United States through manmade conveyances including a hole in a concrete pit, a pathway that contained rip-rap, a paved open lot, and roadside ditches; and (B) pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation. 40 C.F.R. § 122.23(b)(6).

24. On February 19, 2009, the Wisconsin Department of Natural Resources issued Respondent a Notice of Violation for failure to obtain WPDES permit coverage for a large CAFO. In order to resolve that Notice of Violation, Respondent indicated that it would stay below 1,000 animal units and would apply for a WPDES permit for a CAFO.

25. On April 18, 2013, personnel from EPA conducted an inspection at the Site (the Inspection). A copy of the report generated by EPA as a result of the Inspection (Inspection Report) is included as Attachment 1 to this Order.

26. During the Inspection, EPA personnel identified the following:

a) At the Home Site, septic looking waste and process wastewater was leaking out of a hole in the east concrete pit and flowing to the unnamed tributary. The hole in the east concrete pit was a manmade conveyance that facilitates the flow of process wastewater to the unnamed tributary on the east end of the Site.

b) At the Home Site, manure and process waste water from the feed bunker and the open lot west of the Milk Cow Barn did not have containment and was flowing north through pathways that led to the unnamed tributary on the west end of the Site. The rip rap pathway, paved open lot and access road are manmade conveyances that facilitate the flow of process wastewater to the unnamed tributary on the west end of the Site.

c) At the Home Site, animals had direct access to the unnamed tributary on the east end of the Site.

d) At the Satellite Site, manure and process wastewater runoff generated at the open lot and feed bunkers were flowing east to the [redacted] ditch. The [redacted] ditch and culverts are manmade conveyances that facilitate the flow of process wastewater to an unnamed tributary.

27. On June 20, 2013, EPA was contacted by an individual who reported that a day hiker was walking along the unnamed tributary that abuts the west side of the Home Site in April 2013. While hiking along the unnamed tributary, north of [redacted] the hiker ended up knee-deep in manure in a location adjacent to the Home Site.

28. During the April 2013 EPA inspection, surface runoff from the Home Site was observed flowing through pathways to unnamed tributaries that abut the east and west side of the Site. The unnamed tributary that abuts the east side of the Home Site flows to the unnamed tributary that abuts the west side of the Home Site. The unnamed tributary that abuts the west side of the Home Site flows to Bower Creek. Bower Creek flows to the East River. The East River flows to the lower Fox River. The lower Fox River flows to Green Bay in Lake Michigan.

29. During the April 2013 EPA inspection, surface runoff from the Satellite Site was observed flowing through ditches and pathways to an unnamed tributary. The unnamed tributary flows to Bower Creek. Bower Creek flows to the East River. The East River flows to the lower Fox River. The lower Fox River flows to Green Bay in Lake Michigan.

30. Lake Michigan, Green Bay, Fox River, and East River are each a navigable water and water of the United States. Bower Creek and the unnamed tributaries are each a water of the United States.

31. The Site is a point source.

32. The discharges described above are each a discharge of a pollutant(s).

33. As of April 18, 2013, Respondent did not have, and had not applied for, an NPDES permit for the discharge of pollutants from the Site.

34. As a CAFO which discharges, the Site is subject to the NPDES permitting requirements of Section 402 of the CWA, 33 U.S.C. § 1342, and 40 C.F.R. Part 122.

35. By discharging pollutants from the Site without an NPDES permit, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

36. By discharging pollutants from the Site without having applied for an NPDES permit, Respondent violated 33 U.S.C. § 1318 and 40 C.F.R. § 122.23(d).

## IV. COMPLIANCE REQUIREMENTS

### A. Notification of Intent to Comply

37. Within ten (10) calendar days of the effective date of this Order, Respondent shall submit a written certification that it intends to comply with this Order.

### B. Interim Measures

38. Upon the effective date of this Order, Respondent shall cease all unpermitted discharges from the Site.

39. Upon the effective date of this Order, Respondent shall implement interim measures to eliminate all unpermitted discharges from the Site.

40. Respondent shall operate and maintain the interim measures until Respondent completes construction and begins operation of all storage structures required by the Nutrient Management Plan under Section IV.D. of this Order.

### C. NPDES Permit

41. Within ninety (90) calendar days of the effective date of this Order, Respondent shall submit to EPA a detailed plan (Permit Compliance Plan) which describes the actions Respondent has taken or will take to prepare and submit a complete NPDES permit application for the Site (Permit Application) to WDNR. In the Permit Compliance Plan, Respondent shall:

    a. Provide a schedule for development of the nutrient management plan, as described in Paragraph 46.c, and for construction of all controls required by the nutrient management plan;

b. Identify all design costs, capital costs, and annual operation and maintenance, costs associated with the controls required by the nutrient management plan; and

c. Include a schedule for submitting a complete Permit Application to WDNR after construction of all controls required by the nutrient management plan.

42. The Permit Compliance Plan shall provide for submittal of the Permit Application not later than two-hundred and seventy (270) calendar days after the effective date of this Order unless approved by EPA.

43. EPA may approve, disapprove, require revisions to, or modify the draft Permit Compliance Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Permit Compliance Plan within ten (10) calendar days of receipt of EPA's notification of the required revisions. Respondent shall implement the Permit Compliance Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Permit Compliance Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Order.

44. Respondent shall incorporate EPA's comments into the Permit Compliance Plan, and in accordance with the schedule set forth in the Permit Compliance Plan, Respondent shall submit the Permit Application to WDNR. The Permit Application shall include all information required by this Order. At the same time that it submits the Permit Application to WDNR, Respondent shall submit a copy of the Permit Application to EPA.

45. The Permit Application may be an application for an individual permit or a Notice of Intent for Coverage under any final, effective and applicable Wisconsin general permit for CAFOs.

46. In the Permit Application, Respondent shall provide:

a) all information required by EPA Forms 1 and 2B. Those forms can be obtained on the internet at the following addresses:

Form 1: http://www.epa.gov/npdes/pubs/form_1.pdf

Form 2B: http://www.epa.gov/npdes/pubs/cafo_fedregstr_form2b.pdf;

b) a topographic map indicating the locations of the production area and land application area; and

c) a nutrient management plan that satisfies the requirements of Section IV.D. of this Order.

47. In addition to the information required by Paragraph 46**,** Respondent shall include in the Permit Application any additional information required by WDNR.

48. Within ten (10) calendar days of receiving a final NPDES permit from WDNR**,** Respondent shall submit a copy of that final permit to EPA.

## D. Nutrient Management

### 1. General Requirements

49. The nutrient management plan must:

a) be based on a field-specific assessments of the potential for nitrogen and phosphorous transport from each field in the land application area and shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorous movement to surface waters;

b) include procedures in accordance with Paragraphs 56-60 of this Order for the operation and maintenance of structures to ensure the adequate storage of manure, litter, and process wastewater generated at the production area;

c) ensure that mortalities (*i.e.,* dead animals) are:

(1) not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat mortalities; and

(2) handled in such ways as to prevent the discharge of pollutants to surface water;

d) ensure that clean water is diverted, as appropriate, from the production area;

e) prevent direct contact of confined animals with waters of the United States;

f) ensure that chemical wastes and other non-livestock wastes handled on-site are not disposed of in the production area or any manure, litter, process wastewater, or storm water storage or treatment system unless such system is specifically designed to treat such chemicals and other contaminants;

g) identify site-specific conservation practices to be implemented, including, as appropriate, buffers or equivalent practices, to control discharges of manure, litter, or process wastewater to waters of the United States;

h) identify protocols for appropriate testing of manure, litter, process wastewater, and soil, in accordance with this Order;

i) establish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and

j) identify specific records that will be maintained to document the implementation and management of the requirements of this Order.

### 2. Land Application Requirements

#### a. Nutrient Management Limitations

50. Upon the effective date of this Order, Respondent shall not land apply manure, litter, and process wastewater closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters. However, this requirement shall not apply provided that Respondent either:

a) imposes a 35-foot wide vegetated buffer on which Respondent will not land apply manure, litter, or process wastewater; or

b) demonstrates that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback.

51. The nutrient management plan must demonstrate how Respondent will comply with the provisions of 40 C.F.R. § 122.42(e)(5).

#### b. Sampling for Land Application.

52. Upon the effective date of this Order, Respondent shall conduct analyses at least annually of representative samples of any manure, litter, and process wastewater to be land applied.

53. Upon the effective date of this Order, for each field in the land application area to which Respondent applies manure, litter, or process wastewater, Respondent shall sample and analyze the soil at that field for phosphorous content a minimum of once every four years.

#### c. Land Application Records

54. Upon the effective date of this Order, Respondent shall record the following information for each day during which Respondent land applies manure, litter, or process wastewater to the land application area. These records shall separately address each field at which land application occurs:

a. the location of the field;

b. the size of the field;

c. expected crop yields;

d. the date and time manure, litter, or process wastewater is applied;

e. an estimate of the amount of precipitation 24 hours prior to, and for 24 hours after, the application;

f. soil water conditions at the time of each land application (*e.g.*, dry, saturated, flooded, frozen, snow-covered);

g. test methods used to sample and analyze manure, litter, process wastewater, and soil;

h. explanation of the basis for determining application rates for manure, litter, and process wastewater;

i. the amount of manure, litter, or process wastewater applied in either gallons, net tons, or dry tons per acre;

j. calculations showing the total nitrogen and phosphorus to be applied, including sources other than manure, litter, or process wastewater;

k. the total amount of nitrogen and phosphorus actually applied, including documentation of calculations used to determine the total amount applied; and

l. the method used to apply the manure, litter, or process wastewater (*e.g.*, surface, surface with incorporation, injection, etc.).

**3. Transfers of Manure, Litter or Process Waste Water to Other Persons**

55. Upon the effective date of this Order, if Respondent transfers manure, litter, or process wastewater to another person, Respondent shall create a record of the transfer. For each transfer, the transfer record shall indicate the date of the transfer, the name, and address of the recipient of the transfer, and the approximate amount of manure, litter, or process wastewater transferred.

56. Upon the effective date of this Order, prior to transferring manure, litter, or process wastewater to another person, Respondent shall provide that person with the most current annual nutrient analysis for that manure, litter, or process wastewater.

**4. Storage of Manure, Litter and Process Wastewater**

57. The nutrient management plan shall include protocols for the storage of manure, litter and process wastewater and shall provide for the operation and maintenance of structures (*e.g.,* anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, etc.) to be used at the Site for manure, litter, and process wastewater storage.

58. The storage structures shall have sufficient volume such that no manure, litter, or process wastewater discharges will occur from the production area, except when precipitation causes an overflow of manure, litter, or process wastewater from structures that are designed,

constructed, and maintained to contain all manure, litter, and process wastewater, including runoff and direct precipitation from a 25-year, 24-hour (or greater) rainfall event. At a minimum, the structures must have a volume sufficient to store all of the following amounts:

a. normal precipitation (less evaporation) on the surface of the structures during the periods contemplated in this Order;

b. normal runoff during the periods contemplated in this Order from the production area and any upslope areas from which the clean runoff is not diverted around the production area;

c. residuals that remain after materials are removed from the structures;

d. all manure, litter, and process wastewater generated during periods when land application does not occur;

e. direct precipitation on the surface of the structure and runoff to the structure from a 25-year, 24-hour rainfall event; and

f. for open surface liquid storage structures, one feet of freeboard above the capacity necessary to contain the direct precipitation and runoff from a 25- year, 24- hour rainfall event.

59. If the nutrient management plan provides for a storage volume that is less than the volume of manure, litter, and process wastewater that Respondent reasonably expects to add to the structure(s) during one-hundred and eighty (180) calendar days of continuous storage with no land application, Respondent shall include in the nutrient management plan a technical analysis which demonstrates that the lesser volume will assure compliance with this Order.

60. Dewatering and Solids Removal

a. The nutrient management plan shall include criteria and procedures for the dewatering of, and removal of solid material from, all storage structures identified in the nutrient management plan, as necessary to ensure that sufficient storage volume remains in the storage structures to comply with this Order at all times. Any land application of materials removed from the storage structures shall be performed in accordance with the requirements of this Order.

b. Respondent shall measure and record the amounts of material removed from the storage structures.

61. Capacity Depth Markers: All open surface storage structures identified in the nutrient management plan shall be equipped with permanent capacity depth markers which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event.

## E. Site Inspections

62. Upon the effective date of this Order, the Respondent shall conduct the following Inspections:

    a. daily inspections of water supply lines, including drinking water or cooling water lines;

    b. weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the containment structures;

    c. weekly inspections of the storage structures;

    d. weekly determinations of the depth of the manure and process wastewater (and amount of freeboard, where required) in all open surface liquid storage structures as indicated by the capacity depth markers required by this Order; and

    e. periodic inspections (at least four (4) times per year) of equipment used for the land application of manure, litter, or process wastewater.

63. Respondent shall correct any deficiencies identified through the inspections conducted pursuant to this Subsection as soon as possible.

64. Respondent shall prepare and maintain records of each inspection conducted pursuant to this Subsection. Respondent shall record the following information for each weekly inspection:

    a. the date of each inspection;

    b. the amount of freeboard in each storage structure during each inspection;

    c. any deficiencies noted during each inspection and the actions taken to correct those deficiencies; and

    d. for any deficiencies not corrected within thirty (30) calendar days of discovery, an explanation of the factors preventing immediate correction.

## F. Discharge Minimization and Notification

65. Within thirty (30) calendar days of the effective date of this Order, Respondent shall post at the Home Site and Satellite Site procedures to effectively respond to any spill or discharge to waters of the United States, and shall ensure that all employees are aware of, and follow, those procedures. The posted procedures shall contain detailed response instructions which shall include, but not be limited to, the names of officials to be notified, state and federal agencies to be notified, local or downstream public water supply and public health entities to be notified, appropriate phone numbers, addresses, safety precautions, and immediate actions to abate the occurrence.

66. This Order does not authorize Respondent to discharge pollutants to waters of the United States at or from the Site, and any such discharges are subject to enforcement. If for any reason Respondent discharges pollutants to waters of the United States, Respondent must visually monitor the discharge, and immediately notify the EPA by contacting Donald R. Schwer III by telephone at 312-353-8752, and by fax at 312-886-6090 or email at schwer.don@epa.gov. Respondent must also immediately notify the WDNR at 1-800-943-0003. In addition, Respondent must document the following information and submit a written report containing such information to EPA and WDNR within five (5) calendar days of becoming aware of the discharge:

a. the cause of the discharge, including an estimate of the discharge volume, an estimate of the flow rate if the discharge is continuing, and any analytical data;

b. a description of the area receiving the discharge (*i.e.*, field, ditch, stream, or other description);

c. the specific location of the discharge;

d. the period of discharge, including exact begin and end dates and times, and if not corrected, the anticipated time the discharge is expected to continue;

e. steps taken or to be taken to respond to, contain, and mitigate the discharge;

f. corrective action taken to prevent recurrences of the discharge; and

g. apparent impacts to health or the environment resulting from the discharge, including, but not limited to, threats to surface water supplies, water supply wells, recreational areas, and water quality.

## G. Record Retention and Reporting

67. Recordkeeping: Upon the effective date of this Order, Respondent shall maintain at the Site and shall make available to EPA and WDNR personnel upon request copies of records created pursuant to this Order. Such records include:

a. a complete copy of the Permit Application, including a copy of the nutrient management plan;

b. all records required by the nutrient management plan;

c. reports of the depth of the manure and process wastewater in storage structures as indicated by the capacity depth markers required by Section IV.D. of this Order;

d. records documenting the current design of any storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of calendar days of storage capacity;

e. records of the date, time, and estimated volume of any overflow;

f. all results of sampling required by this Order;

g. all land application records required by this Order;

h. records required by this Order documenting transfers of manure, litter, or process waste water to other persons;

i. the criteria and procedures for the solids removal and dewatering of storage structures required by this Order;

j. records of materials removed from storage structures; and

k. inspection records required by this Order.

68. Interim measures: Within thirty (30) calendar days after the effective date of this Order, Respondent shall submit to EPA and WDNR the following documentation concerning the interim measures implemented pursuant to Section IV.B. of this Order:

a. a detailed description of the interim measures;

b. documentation (*e.g.,* as-built diagrams, photographs, affidavits, etc.) showing that Respondent completed installation of the interim measures; and

c. an accounting of the costs incurred by Respondent to install, implement, and maintain the interim measures.

69. Annual Reports: Respondent shall submit an annual report to EPA and WDNR not later than March 15 of each calendar year following the effective date of this Order. In each annual report, Respondent shall include the following information for the previous calendar year prior to submittal of that annual report:

a. the maximum number and type of animals confined, whether in open confinement or housed under roof;

b. the estimated amount of total manure, litter, and process wastewater generated at the Site in the previous 12 months;

c. the estimated amount of total manure, litter, and process wastewater transferred to another person from the Site in the previous 12 months (tons/gallons);

d. the total number of acres for land application covered by the nutrient management plan;

e. the total number of acres under the control of Respondent that were used for land application of manure, litter, and process wastewater in the previous 12 months;

f. a summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including the date, time, and approximate volume of such discharges; and

g. a statement indicating whether the current version of the nutrient management plan was developed or approved by a certified nutrient management planner.

## V. SUBMITTALS

70. Any documents or notifications required by this Order to be submitted to EPA shall be submitted by Respondent to the following address:

Water Enforcement Compliance Assurance Branch (WC-15J)
U.S. EPA Region 5
Attn: Donald R. Schwer III
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

71. Any documents or notifications required by this Order to be submitted to WDNR shall be submitted by Respondent to the following address:

Wisconsin Department of Natural Resources
Agricultural Runoff Program
Attn: Thomas Bauman
PO Box 7921
WT/3, 101 South Webster Street
Madison, Wisconsin 53707

72. All submittals made pursuant to this Order shall be returned under an authorized signature containing the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information, including the possibility of fines and imprisonment for knowing violations.

73. If the signatory finds at any time after submittal of information that any portion of the submittal is false or incorrect, the signatory shall notify EPA immediately. Knowing submittal of false information to EPA in response to this Order may subject Respondent to criminal prosecution under Section 309(c) of the CWA, 33 U.S.C. § 1319(c), and 18 U.S.C. §§ 1001 and 1341.

Confidentiality of Submissions

74. You may not withhold information because you claim it is confidential. However, pursuant to 40 C.F.R. Part 2, Subpart B, you may assert a claim of business confidentiality regarding any portion of the information submitted in response to this Order, as provided in 40 C.F.R. § 2.302(a)(2). The regulations provide that a person may assert a business confidentiality claim covering part or all of the information furnished to EPA when that person submits the information. The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). Effluent data (as defined in 40 C.F.R. § 2.302(A)(2)) and information in NPDES permit applications is not entitled to confidential treatment. 40 C.F.R. § 122.7. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B.

75. If you do not assert a claim of business confidentiality when you submit the information, EPA may make the information available to the public without further notice.

76. EPA may use any information submitted in response to this Order in support of an administrative, civil or criminal action against Respondent.

## VI. OPPORTUNITY TO CONFER

77. Respondent has the opportunity to confer with and to submit information to EPA concerning this Order.

78. Such information may include evidence (*i.e.*, documentation), arguments and comments regarding the legal and factual determinations on which the Order is based, its applicability to Respondent, the appropriateness of its terms or any other relevant and material issue.

79. If Respondent seeks to confer with EPA, it shall request a conference within ten (10) calendar days of the date of signature of this Order by the Water Division Director. To request a conference, contact Donald R. Schwer III at (312) 353-8752, or Respondent's attorney may contact Catherine Garypie, EPA Region 5, Office of Regional Counsel at (312) 886-5825.

    a. Any conference held pursuant to this Paragraph shall take place within ten (10) calendar days from the date of the request, unless the time period is extended by agreement of the

parties. Respondent may appear in person, participate by telephone or be represented by an attorney or other representative.

b. Respondent is responsible for reducing all oral information it presents at the conference, including comments and arguments, to writing and submitting that document to EPA within five (5) calendar days following the conference, unless the time period is extended by agreement of the parties.

c. Such a conference is not a formal evidentiary hearing and does not constitute a proceeding to challenge this Order. EPA will not make a formal transcript of the conference.

80. Regardless of whether Respondent requests a conference, Respondent may submit written information to EPA, as provided in Paragraph 77, above, within ten (10) calendar days of the date of signature of this Order by the Water Division Director, unless the time period is extended by agreement of the parties. Respondent shall submit any written information according to the instructions in Section V of this Order.

81. EPA shall deem a failure to either request a conference or submit written information within ten (10) calendar days of the date of signature of this Order by the Water Division Director as a waiver of the opportunity to confer.

82. EPA shall consider all relevant and material written information submitted by Respondent pursuant to this Section and determine that: (1) this Order should become final as originally issued; (2) this Order should be modified; or (3) this Order should be withdrawn.

83. If EPA determines that this Order should become final as originally issued or should be modified, then EPA shall address the material and relevant information submitted by Respondent in a responsiveness summary.

a. All written information submitted by Respondent and EPA's responsiveness summary shall be included in the administrative record supporting this Order.

b. The administrative record shall be available for public review under the Freedom of Information Act.

84. If EPA determines that this Order should become final as originally issued, EPA will notify Respondent of that decision in writing and shall provide Respondent with a copy of the responsiveness summary.

85. If EPA determines that this Order should be modified, then EPA will modify the Order and issue a modified order to Respondent and shall provide Respondent with a copy of the responsiveness summary.

86. If EPA determines that this Order should be withdrawn, EPA will provide Respondent with written notice of the withdrawal of this Order.

87. No modification or withdrawal of this Order shall be effective unless and until it is issued in writing by EPA.

## VII. EFFECTIVE DATE

88. If Respondent does not request a conference or submit written information pursuant to this Section, this Order shall become final and effective fifteen (15) calendar days after its date of signature by the Water Division Director.

89. If Respondent does request a conference or submit written information pursuant to this Section, and EPA nonetheless determines that this Order should become final as originally issued, this Order shall become final and effective seven (7) calendar days after the date of EPA's signature of the written notification to Respondent of that determination.

90. If EPA modifies this Order, the modified order shall become final and effective seven (7) calendar days after the date of EPA's signature of the modified Order.

## VIII. GENERAL PROVISIONS

91. This Order is not a permit under the CWA, and does not waive or modify Respondent's ongoing obligation and responsibility to ascertain and comply with all other applicable federal, state or local laws, regulations, ordinances, permits, or licenses.

92. EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order, any other violation of the CWA, and to enforce this Order. Neither issuance of this Order by EPA nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited herein, for any other violations of the CWA committed by Respondent, or to enforce this Order.

93. Respondent may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review.

94. Administrative, Civil and Criminal Enforcement

The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, EPA may take one or more of the following actions:

a. assess civil administrative penalties under 33 U.S.C. § 1319(g) and 40 C.F.R. Part 19 of $11,000 per day for each violation that occurred after March 15, 2004 through January 12, 2009 and $16,000 per day for each violation that occurred after January 12, 2009. An administrative penalty action may total up to $177,500 for actions filed after January 12, 2009;

b. seek civil injunctive relief and penalties under 33 U.S.C. § 1319(d) and 40 C.F.R. Part 19. EPA may seek civil judicial penalties of $32,500 per day for each violation that occurred after March 15, 2004 through January 12, 2009, and may seek civil judicial penalties of $37,500 per day for each violation that occurs after January 12, 2009; or

c. seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).

95. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

## IX. CERTIFICATION OF COMPLETION

96. Within thirty (30) calendar days after Respondent has received coverage under a WPDES permit and concludes that it has complied with all requirements of this Order, Respondent shall submit a written certification of completion describing actions taken to comply with all requirements of this Order.

97. After receipt and review of Respondent's certification of completion submitted pursuant to Paragraph 96 of this Order, EPA shall notify Respondent whether all requirements of this Order have been satisfied.

98. This Order shall be effective until EPA notifies Respondent that Respondent has complied with all requirements of this Order.

Date: 9-13-13

Peter Swenson
for Tinka G. Hyde
Director, Water Division

**ATTACHMENT 1**

**CWA COMPLIANCE EVALUATION INSPECTION REPORT**
**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5**
**FOR [redacted] FARMS**

**CWA COMPLIANCE EVALUATION INSPECTION REPORT**
**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5**

| | |
|---|---|
| **Purpose:** | Compliance Evaluation Inspection |
| **Facility:** | [redacted] |
| **NPDES Permit Number:** | None |
| **Date of Inspection:** | April 18, 2013 |
| **EPA Representatives:** | Donald R. Schwer III, Enforcement Officer<br>schwer.don@epa.gov, 312-353-8752<br><br>Michael Lukowich, Environmental Engineer<br>312-353-4645 |
| **State Representatives:** | NA |
| **Facility Representatives:** | [redacted] |
| **Report Prepared by:** | Donald R. Schwer III, Enforcement Officer |
| **Report Date:** | May 16, 2013 |

**Inspector Signature** D R Schwer III

## 1. BACKGROUND

The purpose of this report is to describe, evaluate and document [redacted] Farms compliance with the Clean Water Act (CWA) at its De Pere, Wisconsin facility on April 18, 2013. This inspection was performed pursuant to Section 308(a) of the Federal Water Pollution Control Act, as amended.

[redacted] Farms is a Limited Liability Company (LLC) dairy operation in Brown County, Wisconsin. It owned and operated by Mr. [redacted] ([redacted] Mr. [redacted] ([redacted] and Mr. [redacted] ([redacted] The operation consists of two facilities that operate under the same nutrient management plan (NMP). The Home site is at [redacted] De Pere, Wisconsin. A Satellite site is northeast of the Home location at [redacted] De Pere, Wisconsin. At the time of inspection, April 18, 2013, the Home site was at capacity with 365 milking and dry cows. The Home site also housed 140 calfs. The satellite location housed 100 heifers and 200 steers. Heifers were housed in total confinement; all other cattle were under partial confinement and had access to open lot or pasture. Mr. [redacted] stated that the facility does not deviate significantly from the number of cattle confined at the facility year round. [redacted] Farms is considered a medium dairy Animal Feeding Operation (AFO) due to the number of mature dairy cows maintained on the facility. There is currently no National Pollutant Discharge Elimination System (NPDES) permit allowing discharge from the site and the facility has never applied for one.

Surface runoff from the [redacted] Farms Home site flowed through pathways to unnamed tributaries that abut the east and west side of the site. The unnamed tributary that abuts the east side of the Home site flows to the unnamed tributary that abuts the west side of the Home site. The unnamed tributary that abuts the west side of the Home site flows to Bower Creek. Bower Creek flows to the East River. The East River flows to the lower Fox River. The lower Fox River flows to Green Bay.

Surface runoff from the [redacted] Farms Satellite site flowed through ditches and pathways to an unnamed tributary. The unnamed tributary flows to Bower Creek. Bower Creek flows to the East River. The East River flows to the lower Fox River. The lower Fox River flows to Green Bay.

## 2. SITE INSPECTION

Prior to beginning the inspection, I conducted a visual reconnaissance of the [redacted] Farms sites and its surroundings from the public right-of-way. This included [redacted] for the Home site and [redacted] for the Satellite site. During my reconnaissance, I searched for areas of environmental concern, discharges, drainage patterns, flow directions, distance and direction of nearest perennial waters, visual condition of perennial waters, facility location and layout.

I arrived at [redacted] Farms Home site at approximately 8:30 a.m. on April 18, 2013. I parked the vehicle near the entrance of the facility. The temperature was approximately

40° F and it was raining. The weather station, Green Bay 5.3 SSW, WI US (US1WIBN0010), in Green Bay, Wisconsin had an observed rainfall of 0.2 in. on April 18, 2013. Upon arrival, Mr. Lukowich and I put on disposable boots. I introduced myself and Mr. Lukowich and we presented our credentials to Mr. [redacted] I asked Mr. [redacted] if he was able to act as the official facility representative for [redacted] Farms. He said that he would represent the facility and that his [redacted] Mr. [redacted] was sick. I asked him what he was responsible for and how long he had those responsibilities. Mr. [redacted] said that he is responsible for the general management of the facility.

I explained to Mr. [redacted] that I would be conducting a Concentrated Animal Feeding Operation (CAFO) inspection to evaluate [redacted] Farms compliance with the requirements of the CWA and determine whether or not they require a permit. I explained that the inspection would consist of a review of facility operations, required records, waste generation and management practices, and a visual inspection of the site. I stated that I would document my findings and observations by taking photographs, obtaining statements from facility staff, and by collecting samples if necessary.

**2.1 Interview, Nutrient Management Plan (NMP) and Records Review**

Mr. [redacted] stated that the facility employs seven full time employees. He said that [redacted] Farms is owned by [redacted] and [redacted] He said that there is a Satellite site at [redacted] De Pere, Wisconsin. He said the facility consistently maintains the approximate number of cattle in Table 1. He said the number of cows may fluctuate by 20 -30 animals periodically, but, this is approximately the maximum amount of cattle the facility maintains.

When I asked Mr. [redacted] if any of the animals had direct access to waters of the United States and/or its tributaries, Mr. [redacted] stated that the Dry Cows have access to five acres of pasture that has a gulley run through it, however, he was unsure if it was a water of the United States.

**Table 1: Animal Numbers**

| Type of Animal | Number of Animals | Site | Type of Confinement |
|---|---|---|---|
| Milking Cow | 320 | Home | Total |
| Dry Cow | 45 | Home | Partial |
| Heifer | 100 | Satellite | Total |
| Calf (<250 lbs) | 140 | Home | Partial |
| Steer | 200 | Satellite | Partial |

**Livestock Waste Management**

Mr. [redacted] said manure and used bedding in the barns that house the milking and dry cows is scrapped to an auger. The manure and used bedding is then hauled to concrete pits on the northeast side of the facility. The manure and used bedding from the barns

that house the calves are scrapped, loaded, and hauled to the concrete pits on the northeast side of the facility. The milkhouse wastewater flows to a pit on the northwest corner of the milkhouse and is pumped near the auger which is then transferred to the concrete pits.

Mr. [redacted] said on the Satellite site, manure and used bedding is self contained in the barn for the heifers and is loaded out when needed. The steers have access to an open lot in which runoff flows to and is contained in a pit on the west end of the lot. When the pit is full it is pumped out and transferred to the concrete pit at the Home site.

The cattle are provided drinking water through Ritchie waterers and pales are used for calfs. The source of the drinking water is from a well. Waste drinking water is contained with manure and used bedding. Plate-cooler water is reused for drinking water for the animals. Cleaning of the milk house uses approximately 600 gallons per day. The facility uses sawdust, sand and straw bedding. Used bedding is handled with the manure.

Mr. [redacted] did not know how much manure was generated annually. He said mortalities are taken by Circle R mink farm. Mr. [redacted] said the facility has a nutrient management plan that covers the land application of manure. He said the facility has approximately 2,200 acres available for land application. He said records of land application were kept with the nutrient management plan.

Feed is stored in bunkers on both the Home and Satellite site. Mr. [redacted] said wastewater from the feed bunkers flows into the fields.

**Table 2: Livestock Waste Storage**

| Type of Storage | Site | Storage Capacity | Type of Liner | Depth Markers Present | Last Time Waste was Removed | Days of Storage |
|---|---|---|---|---|---|---|
| Two Pits | Home | ? | Concrete | No | March 2013 | ? |
| Pit | Satellite | ? | Concrete | No | - | ? |
| **Records at site of storage structure design?** | | | | No | | |
| **Additional Information:** | | | | East pit had a hole in it. | | |

**Receiving Surface Waters**

Mr. [redacted] said the unnamed tributary that abuts the west side of the Home site flows year round and that the unnamed tributary that abuts the east side of the Home site flows during the spring melt and during precipitation.

## 2.2 Walkthrough of the Facility

To facilitate the walkthrough section of this report, overview photographs are included in Attachment 1 which includes building labels, outlines of drainage pathways, and waterway locations. The inspection photographs are in Attachment 2.

**Home Site**

I began the walkthrough portion of the inspection by walking east along the south side of the facility. I observed some bedding and manure material that was tracked out of the south side of the Calf Barn 1. Calf Barn 2 had open lots that did not have containment for manure or process wastewater. Runoff from portions of the open lots could flow to the east. A pile of used bedding was located at the east side of Calf Barn 2 (Attachment 2: IMGP0254, IMGP0255). Runoff from the used bedding could flow northeast to the unnamed tributary.

I continued north toward the concrete pits. Much of the area along the east end of the production area flowed toward the east. I observed manure and bedding material through the access ways along the east end of the production area due to poor housekeeping. I observed the west concrete pit; it was approximately half full (Attachment 2: IMGP0256, IMGP0262). The east pit was nearly empty (Attachment 2: IMGP0257). The water in the east pit was dark and smelled septic.

I continued north along the east end of the concrete pits and crossed into the pasture/open lot. The unnamed tributary that abuts the east end of the production area flowed through the pasture/open lot (Attachment 2: IMGP0258, IMGP 0259). There was no vegetation on much of the south side of the pasture. Cattle had direct access to the unnamed tributary. I observed manure patties in and around the unnamed tributary.

On the northeast corner of the concrete pit, I observed a hole in the concrete pit (Attachment 2: IMGP0260). Process wastewater was flowing out of the hole in the concrete pit. The process wastewater smelled septic and was dark in color (Attachment 2: IMGP0261). I observed saw marks along the hole in the pit.

I continued back south and then west along an access way along the north side of Calf Barn 2. I continued to the silage and commodity storage area along the west end of the Milk Cow Barn. The access ways around this area contained waste feed material (Attachment 2: IMGP0263, IMG0264, IMGP0265). Process wastewater runoff flowed to the north. Cattle had access to an open lot along the west end of the Milk Cow Barn (Attachment 2: IMGP0265, IMGP0266). Runoff from the open lot flowed north. There was no containment for manure or process wastewater generated from the feed bunker, access ways, and the open lot. I observed runoff from the access way and open lot flowing north into the field north of the Milk Cow Barn (Attachment 2: IMGP0267, IMGP0268). I observed pathways throughout the field north of the Milk Cow Barn (Attachment 2: IMGP0269). I observed process wastewater on the north end of the feed bunker which drained west to the unnamed tributary (Attachment 2: IMGP0270, IMGP0271).

I observed waste feed, bedding, and manure solids that were covering the surface of the field north of the Milk Cow Barn; wastewater was ponded in several locations of the field (Attachment 2: IMGP0272-IMGP0274). The wastewater flow concentrated into two main pathways which drop approximately ten feet down the ledge (Attachment 2:

IMGP0276-IMGP0281). The west pathway contained rip rap material. The east pathway dispersed into a ponded area before meeting up again with the other pathway (Attachment 2: IMGP0282). The flowing wastewater in the pathways was dark in color and smelled of manure. The flowing wastewater in the pathways looked like a liquid manure slurry that would normally be stored in a wastewater pond or slurry storage structure. The pathway turned west and formed a gulley where it dropped down the ledge into the unnamed tributary (Attachment 2: IMGP0283-IMGP0287). I observed water flowing down the ledge to the unnamed tributary.

**Satellite Site**

I began the walkthrough of the Satelite site on the east side the feed lot and feed bunkers. I observed process wastewater and feed solids around the east side of the feed bunkers (Attachment 2: IMGP0288-IMGP0291). The process wastewater was flowing east into a grassed area north of the Heifer Barn and continueing northeast into the [redacted] ditch (Attachment 2: IMGP0291). I observed water flowing through the culvert east under [redacted] The water contnued flowing north along the east side of [redacted] until [redacted] The water then flowed east along [redacted] approximately one hundred feet before continuing north through a culvert under [redacted] The water continued flowing northeast through a field and wooded area and connected with the unnamed tributary east of the Satellilite site. The water flowed along the approximate pathway traced in Attachment 1: Figure 1.2.

I continued to the east end of the open lot. The eastern portion of the open lot drained to the east. I observed manure and process wastewater in a pathway leading to the grassed area north of the Heifer Barn (Attachment 2: IMGP0293, IMGP0294). The grassed area flowed to the [redacted] ditch. I continued walking west along the south end of the open lot (Attachment 2: IMGP0295-IMGP0297). At the west end of the open lot was a concrete pit to collect manure and process wastewater generated on the open lot (Attachment 2: IMGP0298-IMGP0300).

## 2.3 Closing Conference and Post-Inspection

At the conclusion of the walkthrough, I summarized my findings and observations to Mr. [redacted] I expressed the following areas of concern:

1. At the Satellite site, manure and process wastewater runoff generated at the open lot and feed bunkers were flowing east to the [redacted] ditch.
2. At the Home site, septic looking waste and process wastewater was leaking out of a hole in the east concrete pit and flowing to the unnamed tributary on the east end of the site.
3. At the Home site, animals had direct access to the unnamed tributary on the east end of the site.
4. At the Home site, manure and process wastewater from the feed bunker and the open lot west of the Milk Cow Barn did not have containment and

was flowing north through pathways that led to the unnamed tributary on the west end of the site.

5. At the Home site, the used bedding stockpile and open lots at Calf Barn 2 could flow east to the unnamed tributary on the east end of the site.
6. The Home site contained waste feed, manure, and process wastewater in many of the access ways.

I offered Mr. [redacted] my business card; however, he declined to take it. I explained [redacted] Farm's right to make a claim of business confidentiality and presented Mr. [redacted] with a Confidentiality Notice (Attachment 3). Mr. [redacted] did not make any confidentiality claims at the time of the inspection.

**2.4 Sampling Information**

Sampling was conducted at various locations of the production area to determine the presence of pollutants that could impact the applicable unnamed tributaries. Mr. [redacted] did not accompany EPA during sampling. I offered to split samples with Mr. [redacted] Mr. [redacted] declined splitting samples. Samples were tested for fecal coliform, biochemical oxygen demand (BOD), total dissolved solids (TDS), total suspended solids (TSS), ammonia nitrogen, nitrate- nitrite nitrogen, total Kjeldahl nitrogen (TKN), and total phosphorus (TP).

Sample SO1 was taken at 11:40 am as a field blank. Sample SO2 was taken at 11:46 am of process wastewater pathway adjacent to the open lot on the Satellite site (Attachment 2: IMGP0303-IMGP0304). Sample SO3 was taken at 11:56 am of process wastewater in the roadside ditch at the Satellite site (Attachment 2: IMGP0305-IMGP0306). Sample SO4 was taken at 12:40 pm of process wastewater flowing down the ledge at the Home site (Attachment 2: IMGP0311-IMGP0312). Sample SO5 was taken at 12:48 pm from the process wastewater in the pathway that drains to the unnamed tributary on the west side of the Home site (Attachment 2: IMGP0313-IMGP0314). Sample S06 was taken at 1:08 pm of process wastewater from the concrete pit that drains to the unnamed tributary on the east side of the Home site (Attachment 2: IMGP0320-IMGP0321). Sampling locations can be seen in Attachment 1: Figure 1 and Figure 2.

Sampling concluded at 1:10 pm. All samples were taken by Mr. Lukowich. Samples were preserved at 1:30 pm according to EPA Region 5 Field Sampling Plan. Fecal coliform samples were transported to Pace Analytical Services, Inc. at 1241 Bellevue Street, Green Bay, Wisconsin. All other samples were hand delivered to the EPA Region 5 Chicago Regional Laboratory. All samples met holding time according to the EPA Region 5 Field Sampling Plan developed for the inspection.

The results of the sampling, summarized in Table 3, indicate multiple areas contribute pollutants into the unnamed tributaries. All of the samples had significant quantities of fecal coliform (500,000 to 14,500,000 colony forming units (CFU) per 100 milliliter). Additionally, several forms of nitrogen are contained in the process wastewater samples, as indicated by the TKN, nitrate- nitrite nitrogen, and ammonia nitrogen sampling results.

Total Phosphorus, TDS, and TSS were present in the samples. The laboratory results are in Attachment 4.

Table 3: Field Sampling Results

| Sample ID | Fecal Coliform** (CFU/100ml) | Biochemical Oxygen Demand (BOD)*** (mg/L) | Total Kjeldahl Nitrogen (TKN) (mg/L) | Nitrate-Nitrite Nitrogen (mg/L) | Ammonia Nitrogen (mg/L) | Total Phosphorus (mg/L) | Total Dissolved Solids (TDS) (mg/L) | Total Suspended Solids (TSS) (mg/L) |
|---|---|---|---|---|---|---|---|---|
| SO1 | - | U | .77 | .07 | 0.03 | U | U | U |
| SO2 | 11500000 | 2700 | 12.9 | U | 93.3 | 134 | 4450 | 2930 |
| SO3 | 500000 | 1700 | 113 | U | 43.2 | 27.0 | 2230 | 204 |
| SO4 | 14500000 | 5400 | 1180 | 0.78 | 459 | 135 | 7710 | 3100 |
| SO5 | 1460000 | 940 | 222 | 0.75 | 130 | 47.1 | 2520 | 180 |
| SO6 | 2400000 | 400 | 96.6 | U | 35.5 | 27.2 | 1420 | 2060 |

U-Undetectable

## 3. POTENTIAL VIOLATIONS

According to Section 301(a) of the Clean Water Act, it is a violation to discharge pollutants from a CAFO to waters of the United States without a permit.

EPA observed discharges in the following locations:

1. At the Home site, septic looking waste and process wastewater was leaking out of a hole in the east concrete pit and flowing to the unnamed tributary. The hole in the east concrete pit was a manmade conveyance that facilitates the flow of process wastewater to the unnamed tributary.

2. At the Home site, manure and process wastewater from the feed bunker and the open lot west of the Milk Cow Barn did not have containment and was flowing north through pathways that led to the unnamed tributary. The rip rap pathway, paved open lot and access road are manmade conveyances that facilitate the flow of process wastewater to the unnamed tributary.

3. At the Home site, animals had direct access to the unnamed tributary.

4. At the Satellite site, manure and process wastewater runoff generated at the open lot and feed bunkers were flowing east to the [redacted] ditch. The [redacted] ditch and culverts are manmade conveyances that facilitate the flow of process wastewater to the unnamed tributary.

## 4. AREAS OF CONCERN

EPA observed these areas of concern whereby pollutants have the potential to reach waters of the United States:

1. At the Home site, runoff from the used bedding stockpile and open lots at Calf Barn 2 could flow east to the unnamed tributary on the east end of the site.

2. The Home site contained waste feed, manure, and process wastewater in many of the access ways.

**LIST OF ATTACHMENTS**

1. Aerial photographs of [redacted] Farms
2. Inspection Photographs
3. Confidentiality Notice
4. Field Sampling Results

ATTACHMENT 1: AERIAL PHOTOGRAPHS OF [redacted] FARMS

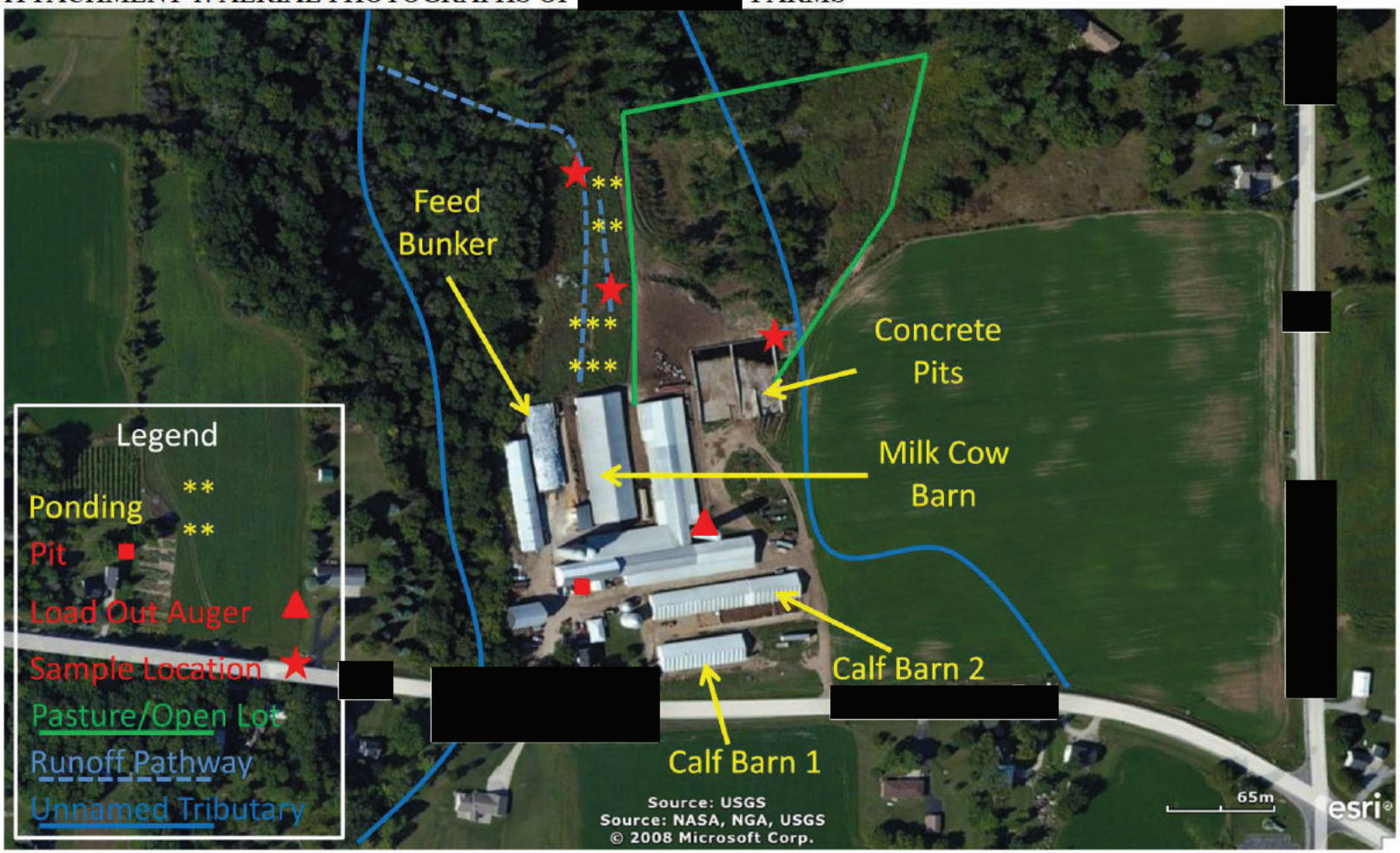


Figure 1.1: Aerial Photograph of [redacted] Farms Home Site

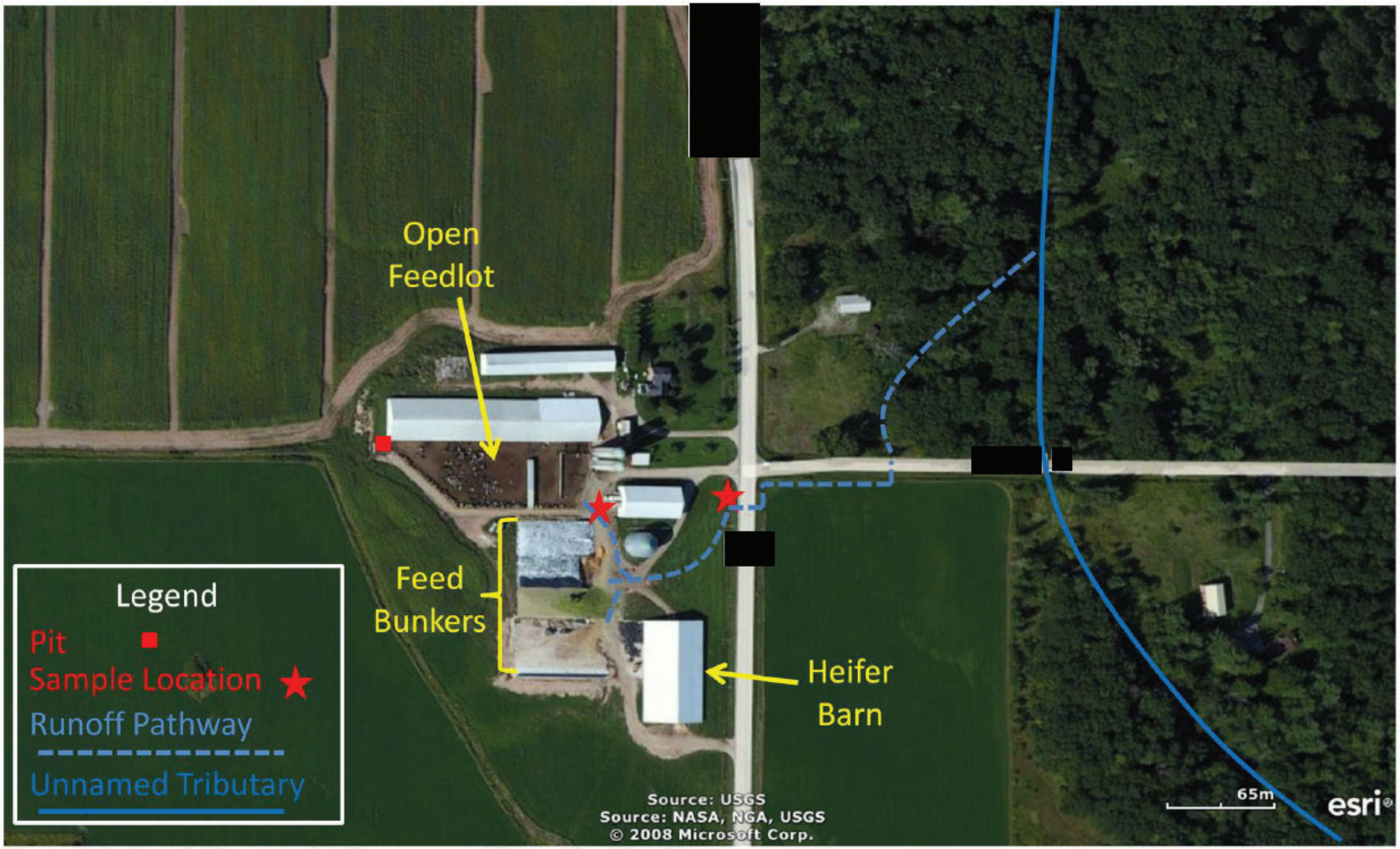


Figure 1.2: Aerial Photograph of [redacted] Farms Satellite Site

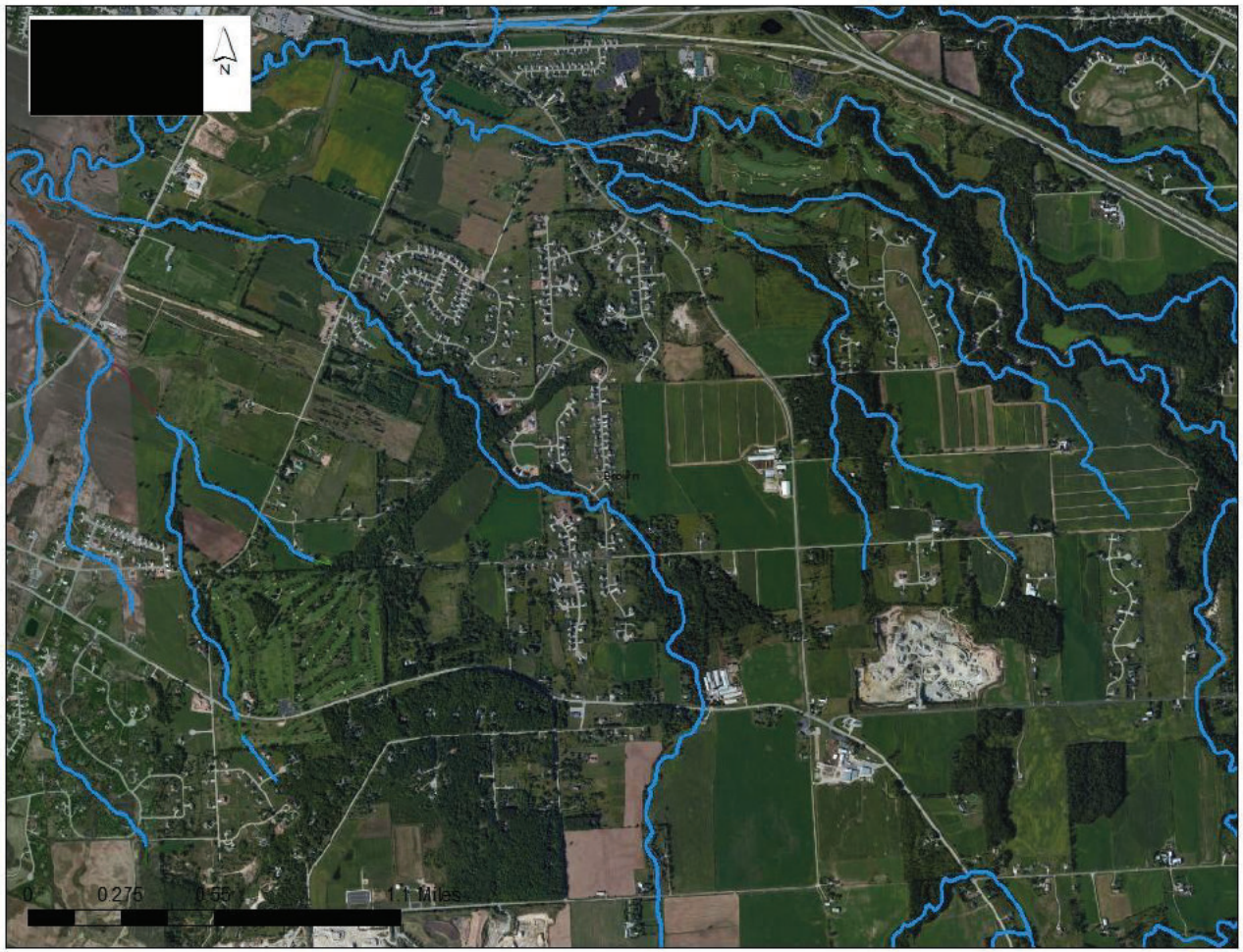


Figure 1.3: Aerial Photograph of National Hydrography Dataset (NHD) Waterways from the United States Geological Survey (USGS)